

party's trade secret or other confidential information and stating with specificity that such information is not otherwise publicly available.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public, unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board decision in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under §1.11 of this chapter or an involved application is or becomes published under §§1.211 to 1.221 of this chapter.

## PART 90—JUDICIAL REVIEW OF PATENT TRIAL AND APPEAL BOARD DECISIONS

Sec.

90.1 Scope.

90.2 Notice; service.

90.3 Time for appeal or civil action.

AUTHORITY: 35 U.S.C. 2(b)(2).

SOURCE: 77 FR 48677, Aug. 14, 2012, unless otherwise noted.

### §90.1 Scope.

The provisions herein govern judicial review for Patent Trial and Appeal Board decisions under chapter 13 of title 35, United States Code. Judicial review of decisions arising out of *inter partes* reexamination proceedings that are requested under 35 U.S.C. 311, and where available, judicial review of decisions arising out of interferences declared pursuant to 35 U.S.C. 135 continue to be governed by the pertinent regulations in effect on July 1, 2012.

### §90.2 Notice; service.

(a) *For an appeal under 35 U.S.C. 141.* (1) In all appeals, the notice of appeal required by 35 U.S.C. 142 must be filed with the Director of the United States Patent and Trademark Office as provided in §104.2 of this title. A copy of the notice of appeal must also be filed with the Patent Trial and Appeal Board in the appropriate manner provided in §41.10(a), 41.10(b), or 42.6(b).

(2) In all appeals, the party initiating the appeal must comply with the requirements of the Federal Rules of Appellate Procedure and Rules for the United States Court of Appeals for the Federal Circuit, including:

(i) Serving the requisite number of copies on the Court; and

(ii) Paying the requisite fee for the appeal.

(3) *Additional requirements.* (i) In appeals arising out of an *ex parte* reexamination proceeding ordered pursuant to §1.525, notice of the appeal must be served as provided in §1.550(f) of this title.

(ii) In appeals arising out of an *inter partes* review, a post-grant review, a covered business method patent review, or a derivation proceeding, notice of the appeal must provide sufficient information to allow the Director to determine whether to exercise the right to intervene in the appeal pursuant to 35 U.S.C. 143, and it must be served as provided in §42.6(e) of this title.

(b) *For a notice of election under 35 U.S.C. 141(d) to proceed under 35 U.S.C. 146.* (1) Pursuant to 35 U.S.C. 141(d), if an adverse party elects to have all further review proceedings conducted under 35 U.S.C. 146 instead of under 35 U.S.C. 141, that party must file a notice of election with the United States Patent and Trademark Office as provided in §104.2.

(2) A copy of the notice of election must also be filed with the Patent Trial and Appeal Board in the manner provided in §42.6(b).

(3) A copy of the notice of election must also be served where necessary pursuant to §42.6(e).

(c) *For a civil action under 35 U.S.C. 146.* The party initiating an action under 35 U.S.C. 146 must file a copy of the complaint no later than five business days after filing the complaint in district court with the Patent Trial and Appeal Board in the manner provided in §42.6(b), and the Office of the Solicitor pursuant to §104.2. Failure to comply with this requirement can result in further action within the United States Patent and Trademark Office consistent with the final Board decision.